

that purchasers before the master are certainly out of the statute; and, that he would not hesitate carrying the purchase into execution, against a bidder before the master, without subscription, after confirmation of the master's report; the judgment of the court taking it out of the statute. Now, if the judgment of the court, confirming the master's report, will take the case out of the statute, it is not easy to perceive, why the judgment of the court, ratifying the sale, though not reported by the master, will not have the same effect. If the master's report is not subscribed by the bidder, it cannot be regarded as a contract signed by him, or some person authorized by him. If the report of the master, though not subscribed by the purchaser, has been considered binding upon him—that is, as having been made by his agent duly authorized, then, the language of Lord Hardwicke—that the judgment of the court took the case out of the statute—would have been inappropriate; because, the requisition of the statute being already complied with, by the report of the master, there could be no necessity for any judgment, to relieve the case from the operation of the statute.

Sales of land, by sheriffs, have been decided in this state, to be within the statute of frauds. *Barney vs. Patterson*, 6 H. & J., 172. But, the essential points of difference between sales so made, and the character and authority of the sheriff and of trustees appointed by this court, are fully and clearly stated by my predecessor, in *Andrews vs. Scotton*, 2 Bland, 636. These differences are so many and material, that it is impossible, with safety, to apply any one principle to them both. But, the vital difference, perhaps, with reference to the question now under consideration, is, that the sheriff's sale, if made conformably to law, is final and valid, and passes the title; whereas, chancery sales, the court being the vendor, are not binding and conclusive until approved and ratified by the court.

It is not, however, necessary in this case to decide the broad question, whether the sales are or are not within the statute of frauds, for one or two reasons. In the first place, the statute is not pleaded at all, by any one, but only relied upon *ore tenus*,